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# Sorry About That

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A \$1,000 payment and a letter of apology seem somehow inappropriate in an invasion of privacy, abuse of power case.

As the sentencing judge pointed out, the C.I.A.'s apparently illegal mail-opening campaign not only cost a lot of taxpayer money, but produced "a perceptible widespread loss of confidence in the integrity of the mails and in the right of individuals to be free from surreptitious intrusions into their privacy by government officials."

But Judge Jack B. Weinstein seems to have done about as much as the law permits. The real answer is right where the real problem is to be found — in Congress and the White House.

Damages under the Federal Tort Claims Act can only be compensatory, they cannot be punitive, Judge Weinstein pointed out.

The Omnibus Crime Control and Safe Streets Act of 1968 "created a right to civil recovery for individuals whose telephone conversations were intercepted without legal sanction by wiretaps or eavesdropping," Judge Weinstein noted, and set a basic damage figure of \$100 a day or \$1,000, whichever is higher.

The compensatory problem is that real damage cannot be reduced to dollars.

None of the three plaintiffs in the case Judge Weinstein decided lost a job or money or suffered a blow to the reputation — losses relatively easy to put dollar figures on.

One plaintiff Norman Birnbaum, an Amherst College professor, wrote to a Soviet professor about a forthcoming meeting on the sociology of religion. Another, Mary Rule MacMillen, a placements coordinator at the a Boston university, wrote to a Soviet dissident. And the third, B. Leonard Avery, a Minneapolis advertising executive, received a letter from his son who was an exchange student at Moscow State University. That made the C.I.A. suspicious and agents began opening the Birnbaum-MacMillen-Avery mail.

All told, the agency opened "at least 215,000 pieces of mail" in a project that lasted from 1953 to 1973 and involved many citizens.

As a result of the Weinstein decision, the American Civil Liberties Union estimates, the government may have to shell out as much as \$215 million. Six to 10 similar

So what seems to be a slap on the wrist may turn out to be a mighty whack.

Only the whack will be felt by the taxpayers, not by the officials who acted illegally.

It is the "Government" that is being sued, and it is the "Government" that will pay. But it will pay with OUR money.

So we get it in the neck twice, not once. Our Constitutional protections are violated, and our money pays for the violations.

In a democratic society, that is not altogether bad. For it tells us that the governmental problem is OUR problem not THEIR problem.

We're going to have to see that we never have a President who will authorize such invasions of privacy and cancelations of rights. And we're going to have to see that Congress never authorizes that kind of thing and provides stiff penalties for it.

Penalties, that is, that penalize the guilty.

The letter of apology the Department of Justice proposed sending the three plaintiffs puts the matter rather nicely.

It extends "sincerest regrets" for any harm done, and assures that "adequate steps have been taken to see that there is no recurrence of such activities in the future."

But what is that assurance worth?

The law has not been changed. Congress has not acted. There is no new protection — nothing that we didn't have at the time the C.I.A. was so avidly opening mail.

All that has been done is the issuance of an executive order — 11905, which withdrew "any prior authorization for C.I.A. mail-opening programs and expressly prohibited the opening of mail or examination of covers of mail in the United States postal channels except in accordance with applicable statutes and regulations.

Obviously, what can be withdrawn by executive order may be, and was, created by executive order.

What is there to prevent it?

In fact, the letter of apology leaves open the question of legality — "The Attorney General also concluded that it cannot be said with any certainty that, at the time the mail-opening activities were undertaken, they were performed under any legal authority."

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